IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

C.C.C.No.486 of 2001(S)

(C.C.924/1995 OF THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, THIRUVALLA)
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SUO MOTU CRIMINAL CONTEMPT INITIATED ON THE BASIS OF THE COMPLAINT SUBMITTED BY THE JUDICIAL FIRST CLASS MAGISTRATE, THIRUVALLA FORWARDED BY THE CHIEF JUDICIAL MAGISTRATE, PATHANAMTHITTA.

RESPONDENT:-

SALIM RAJ, AGED 43 YEARS
(PRESENTLY CIRCLE INSPECTOR OF POLICE,
VADASSERIKKARA, PATHANAMTHITTA),
S/O.DAMODARAN, S.N.MANDIRAM, EDANADU VILLAGE,
RANNI.

BY ADV. SRI.M.C.JOHN
SRI.JESWIN P.VARGHESE.

SENIOR GOVERNMENT PLEADER SRI.M.R.SABU.

THIS CONTEMPT OF COURT CASE (CRIMINAL) HAVING BEEN FINALLY HEARD ON 20/11/2006, THE COURT ON 23/11/2006 DELIVERED THE FOLLOWING:-

V.K.Bali,C.J. &
S.Siri Jagan,J.

C.C.C.No. 486 of 2001-S

Dated, this the 23rd day of November, 2006

JUDGMENT

V.K.Bali,C.J.

A complaint was forwarded by the Chief Judicial Magistrate, Pathanamthitta under Section 15(2) of the Contempt of Courts Act, 1971, hereinafter referred to as 'Act of 1971'. This complaint was sent on the basis of a report from Ms.C.S.Sudha, Judicial Magistrate of First Class, Thiruvalla, under which proceedings were initiated against the respondent in respect of an affidavit filed by him before the Judicial Magistrate of the First Class, Thiruvalla. In the affidavit aforesaid, it was stated by the contemnor that the Magistrate, through her husband, tried to influence him, to which he did not yield and, therefore, she was biased. The respondent-contemnor on receipt of notice, entered appearance and filed his reply. He contested the matter on variety of grounds, including bar of limitation for proceeding

against him in the matter of contempt. His plea on that ground was rejected by this Court, vide a detailed order. He also raised pleas, like that the proceedings were initiated without jurisdiction, that the infringing affidavit was not sworn to by him and that the averments, even if true, do not constitute contempt. These two objections were also rejected, vide a detailed order. In due course of time, charge was framed against the contemnor vide orders dated 13th September, 2006. In spite of contesting the matter upto framing of charge against him, the respondent has chosen now to file an affidavit dated 10.11.2006. Paragraph 3 and 4 whereof read as follows:-

> "According to the memo of charges, I have committed Criminal Contempt by raising false and baseless imputations in the affidavit (dated 11.8.2000) filed along with the petition for staying C.C.No.924/1995 pending before the Judicial First Class magistrate Court, Thiruvalla in which I am the first accused.
>
> I, Salim Raj, the respondent herein tender my unqualified and unconditional apology and I pray that my apology may be accepted and the Contempt may be purged".

On the basis of the averments made in the affidavit referred to above, learned counsel representing the respondent states that since the respondent has now tendered unqualified and unconditional apology, he may be pardoned.

2. We have heard learned counsel representing the parties and examined the records of the case. The respondent, as mentioned above, contested the matter on variety of grounds referred to above when show cause notice was issued to him. In the process, a period of five years have lapsed. When all the pleas raised by him were rejected and charge was framed against him, he has tendered unqualified and unconditional apology. On the basis of records and the affidavit now filed by him, a finding has to be recorded that he is guilty of the charges but, surely the Court would take a lenient view as even though late in point of time he has purged the contempt and has tendered unqualified and unconditional apology. The apology that is tendered from heart and not from pen alone can be accepted. In the totality of the facts and circumstances of this case, it would be difficult to give a finding as to whether the apology now tendered by the respondent is from heart or pen. Whereas it may appear that the

apology is from pen because of prolonged contest shown by the petitioner, it may appear to be from heart from the fact that immediately on framing of charges and before the evidence would be led, the respondent has tendered apology. The present is, thus, a borderline case and in such a situation, benefit of doubt has to be given to the respondent in the matter of punishment.

In view of the facts as fully detailed above, while holding the respondent guilty for contempt of Court under the provisions of the Act of 1971, we impose a fine of Rs.1,000/- (Rupees one thousand only). Let the fine be paid within a period of one month from today.

Disposed of accordingly.

V.K.Bali
Chief Justice

S.Siri Jagan
Judge

vku/-